

**BEFORE THE
STRUCTURAL PEST CONTROL BOARD
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the Accusation Against:

ERIC DAVID GALVAN,

Case No. 2007-50

OAH No. 2007110447

Respondent.

DECISION AFTER NON-ADOPTION

Catherine Richardson, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter in San Diego, California, on March 20, 2008.

Ben Johnson, Deputy Attorney General, Office of the Attorney General, appeared on behalf of the Structural Pest Control Board (SPCB), Department of Consumer Affairs.

Respondent Eric David Galvan (Galvan) represented himself.

The matter was heard March 20, 2008.

The Proposed Decision of the Administrative Law Judge was submitted to the Board on April 18, 2008. After due consideration thereof, the Board declined to adopt said Proposed Decision, and on August 1, 2008 issued a Notice of Non-Adoption of Proposed Decision. Thereafter, on March 4, 2009 the Board issued an Order Fixing Date for Submission of Written Argument. No written argument was received from Complainant or Respondent, and the time for filing written argument in this matter has expired. The entire record, including the transcript of said hearing, having been read and considered pursuant to Government Code Section 11517, the Board hereby makes the following decision and order:

FACTUAL FINDINGS

1. On April 15, 2004, Galvan began employment with Dewey Pest Control as a registered applicator for a termite crew. Galvan received his Registered Applicator's License, No. RA 10192, on July 17, 1998. As an applicator, Galvan would apply pesticides at customers' homes as recommended by a Dewey termite inspector.

2. On January 19, 2006, Dewey employee, Dennis Ray (Ray), performed a termite inspection at the home of Madeline Kozlowski (Kozlowski). Kozlowski had a control service contract with Dewey since 1986. This contract provided that Dewey would inspect her home annually. The January 19th inspection found the presence of drywood termites in portions of the siding of the house as well as in the attic. Galvan was a crew person with Ray and treated the affected areas with pesticides.

3. On May 8, 2006, Galvan's supervisor, Shawn Coleman (Coleman), received a call from Kozlowski, who was trying to reach Galvan. Kozlowski said she had contracted with Galvan, on behalf of Dewey, to repair some damaged siding on her home. Kozlowski told Coleman that Galvan had provided a Dewey proposal to perform the work and she had given him a check for materials but he did not perform the repairs. Coleman checked to see if he could find the Dewey proposal but did not find one. He went to Kozlowski's home and she gave him the proposal. That proposal was a generic, form proposal which stated that Galvan would replace siding on the home for a total amount of \$1,100. It also stated that \$450 was to be paid before the job began, and the remaining \$650 was to be paid when the job was completed. The proposal also indicated that the work was to be performed on March 4 and 5. The form contained a box for the name of the architect; however, "architect" was crossed out and "Handyman Eric Galvan" was written in. The proposal was signed by Kozlowski and it did not mention Dewey Pest Control. The proposal was written on Dewey letterhead, which was not the usual paper on which Dewey proposals are made. Coleman confirmed it was not a Dewey proposal.

4. Coleman contacted his regional manager to advise him of what had happened. Coleman also advised the regional manager that he had the proposal and the cancelled check for \$450 which Kozlowski had written to Galvan. The regional manager told Coleman to fire Galvan. Coleman tried to call Galvan, who returned his call later that day. Galvan agreed to come to the office, at which time Coleman told Galvan of the call he received from Kozlowski. Galvan confirmed that he had made the agreement with Kozlowski to perform the repair work, that he received the check for \$450 from Kozlowski, he cashed the check, but did not use the money to purchase the materials. Coleman terminated Galvan in May 2006. At that time, Galvan still had not performed the repair work.

5. Galvan testified that after he applied the pesticides at Kozlowski's home, Kozlowski told him she wanted some siding on her home repaired. Galvan told Kozlowski that she should call Dewey but that he would be the one to do the repair work. Kozlowski told Galvan that she had called Dewey a couple of times but was unable to get a response, and as a result, she asked Galvan again if he would do the work. He agreed to

do the work and prepared the proposal. Kozlowski accepted the proposal. Galvan intended to perform the work essentially as a handyman on a Saturday or Sunday when he was not working for Dewey. He acknowledged that when he met with Kozlowski to go over the proposal, he was in his Dewey uniform and in a Dewey truck. He also acknowledged that this was a mistake, but felt Kozlowski knew that he was not performing the repair work in his capacity as a Dewey employee.

6. Galvan intended to perform the work on March 4 and 5, 2006, but it rained. The following weekend it rained again. The next two weekends he could not do the work because he had personal commitments. However, he called Kozlowski and told her he would do the job the following weekend. She was angry and told him she was going to call Dewey. He told her that it had nothing to do with Dewey. He also told her he would give her her money back, but she refused the offer and hung up.

7. After Galvan was terminated from his job, his wife left him and he had no place to live. He realized he was wrong but he did not believe the work he had contracted to do for Kozlowski was either structural or pest control work and did not believe he was violating any laws or regulations. He intended to do the work as a handyman. However, he has come to realize that the work was structural repair work or, at the very least, work that he should not have agreed to do without a contractor's license. Galvan understands he may be penalized but he does not believe his license should be revoked. He is the sole provider for his six-year-old daughter and he cannot afford to lose his livelihood.

LEGAL CONCLUSIONS

1. Business and Professions Code¹ section 8620 gives the Board the power to suspend or revoke a license when it finds that the licensee has committed any acts or omissions constituting cause for disciplinary action or in lieu of a suspension may assess a civil penalty.

2. Section 8505 provides in pertinent part:

“‘Structural pest control’ and ‘pest control’ as used in this chapter are synonymous. Except as provided in section 8555 and elsewhere in this chapter, it is, with respect to household pests and wood destroying pests or organisms, or such other pests which may invade households or other structures, . . . the engaging in, offering to engage in, advertising for, soliciting, or the performance of, any of the following: identification of infestations or infections; the making of an inspection for the purpose of identifying or attempting to identify infestations or infections of household or other structures by such pests or organisms; the making of inspection reports, recommendations, estimates, and bids, whether oral or written, with respect to such infestations or infections; and the making of contracts , or

¹ All statutory references are to the California Business and Professions Code unless otherwise indicated.

the submitting of bids for, or the performance of any work including the making of structural repairs or replacements. . . ."

3. Section 8507.1, subdivision (a), states that a "structural pest control applicator" is "any individual who is licensed by the board to apply a pesticide, rodenticide, or allied chemicals or substances for the purpose of eliminating, controlling, or preventing infestation or infections of pests or organisms. . . ." That section also provides that a pest control applicator "shall not contract for pest control work or perform pest control work on his or her own behalf."

4. It is unlawful for a person to engage in or offer to engage in the business of structural pest control unless he or she is licensed to do so. (Bus. & Prof. Code, § 8550, subd. (a).) Section 8641 provides that failure to comply with the provisions of this chapter is grounds for disciplinary action. Section 8642 states that "[t]he commission of any grossly negligent or fraudulent act by the licensee as a pest control operator, field representative, or applicator or by a registered company is a ground for disciplinary action."

5. Cause is established to discipline Galvan's license under section 8507.1, subdivision (a). The work Galvan agreed to perform was "structural pest control" work based on the definition of that term as set forth above in section 8505. Section 8505 includes, within its definition of "structural pest control," the ". . . submitting of bids for, or the performance of any work including the making of structural repairs or replacements. . . ." The proposal Galvan prepared and submitted to Kozlowski was for the repair and/or replacement of siding on her home which was found to be damaged during the Dewey annual inspection. This proposed work constituted "structural repairs or replacements." Galvan, by contracting with Kozlowski on his own behalf, violated section 8507.1, subdivision (a). This conclusion is based on Factual Findings 1 through 7 and Legal Conclusions 1 through 5.

6. Cause is established to discipline Galvan's license under section 8641 for respondent's failure to comply with section 8550. Galvan contracted with Kozlowski to perform repairs on her home. He was not independently licensed to contract for pest control work in his individual capacity. This conclusion is based on Factual Findings 1 through 7 and Legal Conclusions 1 through 5.

7. Cause is established to discipline Galvan's license under section 8642. By accepting payment from Kozlowski without performing pursuant to the terms of the contract, Galvan acted fraudulently. Galvan went to Kozlowski's home wearing his Dewey uniform and driving a Dewey truck. Although Kozlowski paid Galvan by check made payable to him individually, when Galvan did not perform, Kozlowski turned to Dewey for performance of that contract. Galvan would not have been in a position to contract with Kozlowski had it not been for his job as an applicator with Dewey. Finally, Galvan accepted payment from Kozlowski, did not perform the work as promised, yet failed, and continues to fail, to return Kozlowski's money. This conclusion is based on Factual Findings 1 through 7 and Legal Conclusions 1 through 5.

8. Section 8520.1 provides that "[p]rotection of the public shall be the highest priority for the Structural Pest Control Board in exercising its licensing, regulatory, and disciplinary functions. Whenever the protection of the public is inconsistent with other interests sought to be promoted, the protection of the public shall be paramount." To carry out this policy, section 8642 provides for disciplinary action for the "commission of any grossly negligent or fraudulent act by the licensee as a pest control operator, field representative, or applicator. . . ." Under the circumstances of this case, the appropriate measure of discipline is that Registered Applicator license no. RA 10192 issued to respondent Eric David Galvan be revoked, with revocation stayed. Respondent's license shall also be suspended for fifteen (15) days. Respondent shall be placed on probation with terms and conditions sufficient to protect the public. The above-mentioned discipline, with a term of suspension, is the minimum necessary to instill upon Respondent the full import of his actions and to protect the public.

ORDER

Registered Applicator License No. RA 10192 issued to respondent Eric David Galvan is hereby revoked. However, the revocation is stayed and respondent's license is suspended for fifteen (15) days and placed on probation for a period of three (3) years on the following terms and conditions:

1. Respondent shall obey all laws of the United States and the State of California and all laws and rules relating to the practice of structural pest control.
2. Respondent shall file quarterly reports with the Board during the period of probation.
3. Should respondent leave California to reside outside this State, respondent must notify the Board in writing of the dates of departure and return. Periods of residency or practice outside the State shall not apply to reduction of the probationary period.
4. Respondent shall notify all present and prospective employers of the decision in case No. 2007-50 and the terms, conditions and restrictions imposed on respondent by this decision. Within thirty (30) days of the effective date of this decision, and within fifteen (15) days of the respondent undertaking new employment, respondent shall cause his/her employer to report to the Board in writing acknowledging the employer has read the decision in this matter.
5. Respondent shall reimburse the Board for a maximum of one random inspection per quarter by Board Specialists during the period of probation, not to exceed \$125 per inspection.
6. Respondent shall submit proof to the registrar that restitution in the amount of \$450 has been made to Madeline Kozlowski within sixty (60) days of the effective date of this decision.

7. Respondent is prohibited from serving as an officer, director, associate, partner, qualifying manager or branch office manager of any registered company during the period of probation in this matter.

8. Respondent shall not have any legal or beneficial interest in any company currently or hereinafter registered by the Board.

9. Within six months of the effective date of this decision, respondent shall take and pass the Operator's/Field Representative's examination currently required of new applicants for license and/or any other examination prescribed by the Board. The examination shall be taken on regularly scheduled dates. Respondent shall pay the established examination fee.

This decision shall become effective on June 29, 2009.

IT IS SO ORDERED this 29th day of May, 2009.

Clifford L. Utley
CLIFFORD L. UTLEY, President
STRUCTURAL PEST CONTROL BOARD

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FILED

Date 4/10/07 By Kelli Okuma

10 **BEFORE THE**
11 **STRUCTURAL PEST CONTROL BOARD**
12 **DEPARTMENT OF CONSUMER AFFAIRS**
13 **STATE OF CALIFORNIA**

14 In the Matter of the Accusation Against:

Case No. 2007-50

15 ERIC DAVID GALVAN

939 East Union Street

16 Pasadena, California 91106

ACCUSATION

17 Registered Applicator's License No. RA 10192

Respondent.

18
19 Complainant alleges:

20 **PARTIES**

21 1. Kelli Okuma ("Complainant") brings this Accusation solely in her official
22 capacity as the Registrar/Executive Officer of the Structural Pest Control Board ("Board"),
23 Department of Consumer Affairs.

24 2. On or about July 17, 1998, the Board issued Registered Applicator's
25 License Number RA 10192 in Branch 3 (termite) to Eric David Galvan ("Respondent"),
26 employee of W. A. Stone Termites Alternatives to Fumigation. On December 7, 2000,
27 Respondent's registered applicator's license was upgraded to include Branch 2 (general pest).
28 On or about April 15, 2004, the Board's records reflected that Respondent was employed by

1 Dewey Pest Services, doing business as Dewey Pest Control ("Dewey"). Respondent's registered
2 applicator's license was in full force and effect at all times relevant to the charges brought herein
3 and will expire on July 17, 2007, unless renewed.

4 JURISDICTION

5 3. Business and Professions Code ("Code") section 8620 provides, in
6 pertinent part, that the Board may suspend or revoke a license when it finds that the holder, while
7 a licensee or applicant, has committed any acts or omissions constituting cause for disciplinary
8 action or in lieu of a suspension may assess a civil penalty.

9 4. Code section 8625 states:

10 The lapsing or suspension of a license or company registration by
11 operation of law or by order or decision of the board or a court of law, or the
12 voluntary surrender of a license or company registration shall not deprive the
13 board of jurisdiction to proceed with any investigation of or action or disciplinary
14 proceeding against such licensee or company, or to render a decision suspending or
15 revoking such license or registration.

16 5. Code section 118, subdivision (b), states:

17 The suspension, expiration, or forfeiture by operation of law of a license
18 issued by a board in the department, or its suspension, forfeiture, or cancellation
19 by order of the board or by order of a court of law, or its surrender without the
20 written consent of the board, shall not, during any period in which it may be
21 renewed, restored, reissued, or reinstated, deprive the board of its authority to
22 institute or continue a disciplinary proceeding against the licensee upon any
23 ground provided by law or to enter an order suspending or revoking the license or
24 otherwise taking disciplinary action against the licensee on any such ground.

25 6. Code section 8654 states:

26 Any individual who has been denied a license for any of the reasons
27 specified in Section 8568, or who has had his or her license revoked, or whose
28 license is under suspension, or who has failed to renew his or her license while it
was under suspension, or who has been a member, officer, director, associate,
qualifying manager, or responsible managing employee of any partnership,
corporation, firm, or association whose application for a company registration has
been denied for any of the reasons specified in Section 8568, or whose company
registration has been revoked as a result of disciplinary action, or whose company
registration is under suspension, and while acting as such member, officer,
director, associate, qualifying manager, or responsible managing employee had
knowledge of or participated in any of the prohibited acts for which the license or
registration was denied, suspended or revoked, shall be prohibited from serving as
an officer, director, associate, partner, qualifying manager, or responsible

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managing employee of a registered company, and the employment, election or association of such person by a registered company is a ground for disciplinary action.

STATUTORY PROVISIONS

7. Code section 8505 states:

"Structural pest control" and "pest control" as used in this chapter are synonymous. Except as provided in Section 8555 and elsewhere in this chapter, it is, with respect to household pests and wood destroying pests or organisms, or such other pests which may invade households or other structures, including railroad cars, ships, docks, trucks, airplanes, or the contents thereof, the engaging in, offering to engage in, advertising for, soliciting, or the performance of, any of the following: identification of infestations or infections; the making of an inspection for the purpose of identifying or attempting to identify infestations or infections of household or other structures by such pests or organisms; the making of inspection reports, recommendations, estimates, and bids, whether oral or written, with respect to such infestations or infections; and the making of contracts, or the submitting of bids for, or the performance of any work including the making of structural repairs or replacements, or the use of insecticides, pesticides, rodenticides, fumigants, or allied chemicals or substances, or mechanical devices for the purpose of eliminating, exterminating, controlling or preventing infestations or infections of such pests, or organisms.

"Household pests" are defined for the purpose of this chapter as those pests other than wood-destroying pests or organisms, which invade households and other structures, including, but not limited to, rodents, vermin and insects.

8. Code section 8507.1, subdivision (a), states:

"Structural pest control applicator" is any individual who is licensed by the board to apply a pesticide, rodenticide, or allied chemicals or substances for the purpose of eliminating, exterminating, controlling, or preventing infestation or infections of pests or organisms included in Branch 2 or Branch 3 on behalf of a registered company.

A structural pest control applicator shall not contract for pest control work or perform pest control work in his or her own behalf.

9. Code section 8550, subdivision (a), states that "[i]t is unlawful for any individual to engage or offer to engage in the business or practice of structural pest control, as defined in Section 8505, unless he or she is licensed under this chapter.

10. Code section 8641 states:

Failure to comply with the provisions of this chapter, or any rule or regulation adopted by the board, or the furnishing of a report of inspection without the making of a bona fide inspection of the premises for wood-destroying pests or organisms, or furnishing a notice of work completed prior to the completion of the work specified in the contract, is a ground for disciplinary action.

1 11. Code section 8642 states that "[t]he commission of any grossly negligent or
2 fraudulent act by the licensee as a pest control operator, field representative, or applicator or by a
3 registered company is a ground for disciplinary action."

4 Cost Recovery

5 12. Code section 125.3 states, in pertinent part, that a Board may request the
6 administrative law judge to direct a licensee found to have committed a violation or violations
7 of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
8 enforcement of the case.

9 FACTUAL BACKGROUND

10 13. Madeline Kozlowski ("Kozlowski") is the owner of the property located at
11 968 Sidonia Street, Encinitas, California. Kozlowski had purchased a control service contract
12 from Dewey to maintain protection from termites. Pursuant to the provisions of the contract,
13 Dewey inspected the property annually and treated the property for drywood termites as needed.

14 14. On or about January 19, 2006, Dewey's Field Representative, Dennis Ward
15 Ray, inspected the property and found an area of drywood termite infestation at the front roof
16 overhang and decay fungi damage. Dewey instructed Respondent to go to the property and
17 locally treat the roof overhang (Respondent was employed as a repairman/applicator at Dewey's
18 San Marcos Branch Office). While Respondent was at the property, Kozlowski mentioned that
19 she needed to have someone replace the fungus-damaged siding on the garage. Respondent
20 offered to return and give Kozlowski a bid to replace the siding.

21 15. On or about February 23, 2006, Respondent returned to the property and
22 gave Kozlowski a written proposal to replace the siding for \$1,100. That same day, Kozlowski
23 issued a check made payable to Respondent in the amount of \$450 in payment for the materials
24 needed for the repair. Respondent cashed the check, but failed to perform the repairs as
25 promised.

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1 **FIRST CAUSE FOR DISCIPLINE**

2 **(Unlawfully Contracting for Pest Control Work)**

3 16. Respondent is subject to disciplinary action pursuant to Code section 8641
4 in that on or about February 23, 2006, Respondent contracted for pest control work on his own
5 behalf, as set forth in paragraph 15 above, in violation of Code section 8507.1.

6 **SECOND CAUSE FOR DISCIPLINE**

7 **(Unlicensed Activity)**

8 17. Respondent is subject to disciplinary action pursuant to Code section 8641
9 in that on or about February 23, 2006, Respondent failed to comply with Code section 8550,
10 subdivision (a). Respondent submitted a written proposal or bid to Kozlowski for the making of
11 structural repairs or replacements and entered into a contract with Kozlowski for the work,
12 as set forth in paragraph 15 above, when he was not licensed to contract for pest control work.

13 **THIRD CAUSE FOR DISCIPLINE**

14 **(Fraud)**

15 18. Respondent is subject to disciplinary action pursuant to Code section 8642
16 in that in or about February 2006, Respondent committed fraud, as follows: Respondent charged
17 and obtained payment from Kozlowski for replacing the fungus-damaged siding on her garage
18 when, in fact, Respondent never performed the work.

19 **OTHER MATTERS**

20 19. Code section 8620 provides, in pertinent part, that a respondent may request
21 that a civil penalty of not more than \$5,000 be assessed in lieu of an actual suspension of 1 to 19
22 days, or not more than \$10,000 for an actual suspension of 20 to 45 days. Such request must be
23 made at the time of the hearing and must be noted in the proposed decision. The proposed
24 decision shall not provide that a civil penalty shall be imposed in lieu of a suspension.

25 20. Pursuant to Code section 8654, if discipline is imposed on Registered
26 Applicator's License Number RA 10192, issued to Eric David Galvan, Eric David Galvan
27 shall be prohibited from serving as an officer, director, associate, partner, qualifying manager, or
28 responsible managing employee for any registered company during the time the discipline is

1 imposed, and any registered company which employs, elects, or associates Eric David Galvan
2 shall be subject to disciplinary action.

3 PRAYER

4 WHEREFORE, Complainant requests that a hearing be held on the matters herein
5 alleged, and that following the hearing, the Structural Pest Control Board issue a decision:


6 1. Revoking or suspending Registered Applicator's License Number
7 RA 10192, issued to Eric David Galvan;

8 2. Prohibiting Eric David Galvan from serving as an officer, director,
9 associate, partner, qualifying manager or responsible managing employee of any registered
10 company during the period that discipline is imposed on Registered Applicator's License Number
11 RA 10192, issued to Eric David Galvan;

12 3. Ordering Eric David Galvan to pay the Structural Pest Control Board the
13 reasonable costs of the investigation and enforcement of this case, pursuant to Business and
14 Professions Code section 125.3;

15 4. Taking such other and further action as deemed necessary and proper.

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17 DATED: 4/10/07

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19 
20 KELLI OKUMA
21 Registrar/Executive Officer
22 Structural Pest Control Board
23 Department of Consumer Affairs
24 State of California

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27 Complainant